

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Peter Hoy (S7)	Team: Squad #14	CCRB Case #: 201403900	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/22/2014 7:20 PM	Location of Incident: East 152nd Street and Tinton Avenue	Precinct: 40	18 Mo. SOL 10/22/2015	EO SOL 10/22/2015	
Date/Time CV Reported Wed, 04/23/2014 4:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/23/2014 4:16 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Elvis Duran	21865	946965	PSA 7
2. SGT Khandakar Abdullah	03383	942924	PSA 7
3. An officer			PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Braulio Aponte	00581	948623	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.SGT Khandakar Abdullah	Abuse: Sgt. Khandakar Abdullah stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Khandakar Abdullah	Abuse: Sgt. Khandakar Abdullah searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Elvis Duran	Abuse: PO Elvis Duran issued a summons to § 87(2)(b)	
D. An officer	Abuse: An officer threatened to use force against § 87(2)(b)	

### Case Summary

On April 22, 2014, § 87(2)(b) was driving with his friend, § 87(2)(b) in the vicinity of East 152nd Street and Tinton Avenue in the Bronx. At approximately 7:20 p.m., their vehicle was stopped by PO Elvis Duran, PO Braulio Aponte, and Sgt. Khandahar Abdullah of Police Service Area 7 (**Allegation A**). The officers instructed § 87(2)(b) and § 87(2)(b) to exit the vehicle, after which Sgt. Abdullah searched the vehicle (**Allegation B**). The officers initially told § 87(2)(b) that they had stopped him for a missing headlight, tinted windows, and driving on the wrong side of the road. § 87(2)(b) explained that he had been driving around potholes and the officers told him they would give him a break. However, when he proceeded to argue with the officers about the reasons for the stop, PO Duran issued him a summons for § 87(2)(b), § 87(2)(a) (**Allegation C**). At an unknown point during the incident, an unidentified officer allegedly said, “He’s lucky I don’t beat his ass,” in reference to § 87(2)(b) (**Allegation D**).

This case was initially assigned to Investigator Christopher Mills. On April 14, 2015, following Investigator Mills’ resignation from the CCRB, the case was reassigned to Assistant Supervising Investigator Peter Hoy for closure.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) both agreed to mediate this complaint. § 87(2)(g)
- Without New York State Identification Numbers, a search of the Office of Court Administration database could not be conducted for the conviction histories of § 87(2)(b) and § 87(2)(b)
- On April 20, 2015, it was confirmed via telephone by the Bronx Criminal Court that the summons issued to § 87(2)(b) was dismissed on § 87(2)(b).
- As of May 21, 2015, no notice of claim has been filed with the Office of the Comptroller by either § 87(2)(b) or § 87(2)(b) in regards to this incident (encl. 8K).

### Civilian and Officer CCRB Histories

- PO Duran has been a member of the service for six years and has two prior substantiated allegations from one prior CCRB complaint. In CCRB case number 201108423, the allegations substantiated against him were for a stop and a vehicle search. The Board recommended charges, but the NYPD did not take any disciplinary action. (encl. 2A)
- Sgt. Abdullah has been a member of the service for eight years and there are no substantiated allegations against him. § 87(2)(g) (encl. 2B)
- § 87(2)(b) (encl. 2C)
- § 87(2)(b) has not filed any other complaints with the CCRB. (encl. 2D)

### Potential Issues

- Both the civilians and the officers described the incident location as being near 815 East 152<sup>nd</sup> Street. In comparing the video footage to images from Google Street View (encl. 2E), it is clear that the vehicle stop, in fact, occurred in front of 664 Tinton Avenue, around the corner and approximately 250 feet away from 815 East 152<sup>nd</sup> Street. The following is visible on Google Street View: Tinton Avenue is a two lane road, with two travelling lanes going in opposite directions and parking on both sides of the street; in the middle of the street is a flush median outlined by two sets of double yellow solid lines with white crosshatch markings between them; and the paint is very faded and not visible in certain stretches of the road. The Google Street View images are consistent with the images of the

road captured in § 87(2)(b)'s video recording of the incident.

- Several attempts were made to schedule PO Aponte as a witness officer. PO Aponte was identified as the third officer involved in this incident, but he was on sick leave for an extended period of time.

§ 87(2)(g)

- § 87(2)(b) and § 87(2)(b) both stated to the CCRB that § 87(2)(b)'s vehicle has been stopped and searched on numerous previous occasions; however, they did not provide other details or file complaints about these prior incidents.

### **Civilian Statements**

#### **Complainant/Victim:** § 87(2)(b)

- On April 29, 2014, § 87(2)(b) provided an in-person statement to the CCRB (encl. 3C-E) that was generally consistent with his initial phone complaint (encl. 3B). However, during his in-person statement, he noted that he had “a little problem forgetting” the details of the incident.
- On the date of incident, § 87(2)(b) was driving his brother's vehicle, with § 87(2)(b) in the front passenger's seat. He believed that the vehicle had “factory tints” in the rear windows.
- § 87(2)(b) denied committing any traffic violations; however, he was unclear whether the path of his car went into the opposite lane of traffic. He explained there were potholes in the road and that he drove “to the side” to get around them. At various points in the interview, he first disputed that he was driving on the wrong side of the road, then clarified that he did not drive “all the way on the other side,” then admitted that he drove into the other lane, and then explained that it was a wide street without any lane markings so there was a lot of space to go around the potholes.
- He was pulled over by three officers. After pulling over, § 87(2)(b) was holding his stomach and explained to the officers that he was in pain.
- § 87(2)(b) asked the officers why he had been pulled over. At various points during the incident, an unspecified officer told him that he had been pulled over for driving in the wrong lane, for having a headlight out, for having tinted windows, and for driving recklessly.
- An officer told § 87(2)(b) to exit the car. § 87(2)(b) recalled that this was the same officer who later issued him a summons, identified by the investigation as PO Duran. Another officer told § 87(2)(b) to exit the car. § 87(2)(b) recalled that the “chubby” officer, identified by the investigation as PO Aponte, interacted with § 87(2)(b). § 87(2)(b) asked why they had to exit, and an unidentified officer told him that he “just wanted to make sure everything was fine.” After being instructed to exit twice, they complied and walked to the back of the vehicle.
- § 87(2)(b) left his cell phone in the car, but he used § 87(2)(b)'s cell phone to record the incident, beginning with when they were at the back of the car.
- An officer, later identified as Sgt. Abdullah, then searched the interior of § 87(2)(b)'s vehicle, including the front passenger's and driver's side areas, under the seats, in the visors, in the door pockets, and behind the seats, including the “hatch” (a luggage area behind the seat that is accessible from the front seat). Sgt. Abdullah did not open the trunk.
- When § 87(2)(b) asked about the reason for the search, an officer denied that they were doing a search and said they were just looking through “reachable, probable areas.” § 87(2)(b) was not clear about which officer said this.
- § 87(2)(b) argued with the officers about the search. Sgt. Abdullah responded by warning § 87(2)(b) to stay still and stop fidgeting.
- § 87(2)(b) continued to argue with the officers about the reason for the stop. He explained that it was daytime and that his headlights were both on and working. He walked to the front of the vehicle to record that his headlights were working and to show this to the officers. One of the officers told him they were “only HIDs” and could go off and on. § 87(2)(b) continued arguing with the

officers about the cause for the stop. An officer later identified as PO Duran became mad, asked for § 87(2)(b)'s ID, and then issued a summons to § 87(2)(b) for reckless driving.

- § 87(2)(b) did not hear any officer threaten to "beat the shit" out of him, but he informed the CCRB that § 87(2)(b) later told him that he had heard this.

**Victim:** § 87(2)(b)

- On April 29, 2014, § 87(2)(b) provided a statement at the CCRB (encl. 3H-J). § 87(2)(g)
- § 87(2)(b) he did not provide a clear chronological narrative, and at various points, he conflated the actions of the different officers. Specifically, he identified the bald officer who searched the car as the same as the officer that drove the police vehicle and told § 87(2)(b) that the officers were not searching the car. § 87(2)(g)
- § 87(2)(b) told the CCRB that prior to the vehicle stop, § 87(2)(b) had not committed any traffic violations. He stated that the vehicle's back windows were tinted, but legally so.
- The officers told both men to exit the vehicle and directed them to the rear of the car, with which they both complied.
- Sgt. Abdullah then entered and searched the vehicle for two to three minutes. When § 87(2)(b) asked why Sgt. Abdullah was searching the car, one of the other officers, either PO Duran or PO Aponte, said, "He's not searching your car, he's just searching on top."
- § 87(2)(b) was nervous during the stop, but he did not raise his voice and he answered the officers' questions. § 87(2)(b) was more agitated than § 87(2)(b). § 87(2)(b) argued about the reason for the stop and the search and "kinda got upset while arguing about the headlights," so § 87(2)(b) tried to calm him down. § 87(2)(b) used § 87(2)(b)'s phone to record part of the incident, including the car search. The officers' demeanors became more agitated and aggressive as § 87(2)(b) argued and filmed them.
- § 87(2)(b) recalled that at one point during the incident, an officer said, "He's lucky I don't beat his ass," referring to § 87(2)(b). § 87(2)(b) did not specify when this was said or in what context. As noted above, § 87(2)(b) conflated the actions of Sgt. Abdullah and PO Duran, and in attributing this remark to an officer, he described the actions of both Sgt. Abdullah and PO Duran.

**Video Evidence**

§ 87(2)(b) provided video footage that he recorded during the incident using § 87(2)(b)'s phone (encl. 4A-B).

The footage begins by showing the rear window of § 87(2)(b)'s vehicle, which appears tinted, but still transparent. The right passenger's side door is open. At <0:13>, a voice identified as that of § 87(2)(b) complains that the officers are searching his car. Through the back windshield, a light is visible in the car. Another voice off camera denies that the officers are searching the car. At <0:26>, this voice says, "He's looking at lungeable, grabable area."

At <0:34>, § 87(2)(b) turns around and asks an officer for his name. The officer identifies himself as "Officer Duran from PSA 7."

At <0:38>, the camera pans to a § 87(2)(b), and § 87(2)(b) says, "That's your car, that's your license."

Between <0:49> and <1:11>, § 87(2)(b) continues complaining about the vehicle stop and at least two voices off camera begin talking at the same time. One voice says, "Let me tell you what you did sir," "You're on the wrong side," "We can even get you for the tints," and "We're letting you go." Another voice says, "You're driving reckless. You're going to get stopped," and "You have a headlight out. You

have tinted windows. You're driving on the wrong side of the road. What you want us to do, brother?"

At <1:18>, an officer, identified by the investigation as Sgt. Abdullah, leans into the passenger's side of the car. At <1:28>, he walks around the car and then leans into the driver's side of the vehicle. § 87(2)(b) asks about the search and an unidentified voice says, "That's not a search. Lungeable, grabbable area."

At <1:43>, Sgt. Abdullah faces the camera, raises his hand, and says, "You leveled the safety up to here... I told you to relax. You're fidgety, the whole time." § 87(2)(b) responds that he is having stomach pains and complains about the officers' behavior.

At <2:23>, § 87(2)(b) records that both headlights are on and then continues arguing with the officers about the reason for the stop. At <2:34>, an officer identified as PO Duran then says, "You know what, I'm going to give you a summons for reckless driving. Give me your ID."

Between <1:33> and <2:08>, part of the road is visible and it shows faded, hashed, lane markings in the center of the road. From <2:26> onward, another part of the road is visible and it shows in various points, no lane markings or very faded lane markings. It also shows potholes in the road.

### **NYPD Statements**

#### **Subject Officer: PO Elvis Duran**

- On September 17, 2014, PO Duran was interviewed at the CCRB (encl. 5D-E), but he failed to bring his memo book to the interview and did not recall with whom he was working on the incident date. Initially, he stated that he did not recall the incident. However, after viewing the video footage, he identified himself in the video and recalled that he issued a summons during the incident, but he still could not identify the other officers with whom he was working.
- On October 15, 2014, PO Duran was interviewed a second time at the CCRB (encl. 5F-H), this time bringing his memo book, which noted that he was working with PO Aponte. He provided a more detailed account of the incident that was consistent with his memo book entries.
- PO Duran did not know if he was working with other officers besides PO Aponte.
- At the time and place of occurrence, PO Duran observed § 87(2)(b) driving recklessly. § 87(2)(b) was driving behind the officers and then passed them at a high rate of speed. He drove into the opposite lane, across a double yellow line, making it difficult for oncoming traffic to flow. PO Duran did not recall potholes or any other obstructions in the roadway.
- The officers pulled § 87(2)(b)'s vehicle over. PO Duran approached the driver's side and spoke to § 87(2)(b) who was irate, cursing, and uncooperative with PO Duran's requests for information and identification. During the incident, § 87(2)(b) repeatedly said he "had to take a shit" and explained that he was on his way to the hospital.
- § 87(2)(b) was also fidgeting, which PO Duran described as "trying to hide things in the lungeable grabble area," seeming to be hiding something near the center cup holders, and moving his hands in a rapid motion towards the cup holders. PO Duran did not see § 87(2)(b) gripping anything. PO Duran could not see what was there and he asked § 87(2)(b) to stop moving.
- PO Duran was concerned with § 87(2)(b)'s demeanor and thought he might attack the officers. As a precaution, both § 87(2)(b) and a passenger, identified by the investigation as § 87(2)(b), were told to exit the vehicle. PO Duran had to instruct § 87(2)(b) to do this more than once before he complied.
- Initially, PO Duran did not recall if any officer searched the vehicle or took any action to determine if anything had been placed near the cup holders. PO Duran noted that, "We don't search cars." After viewing the video footage, PO Duran still denied any recollection of a vehicle search, but acknowledged that he told § 87(2)(b) that the officers do not search vehicles, they "look at lungeable grabbable areas." However, PO Duran did not recall any officer searching the lungeable, grabbable area during the incident. PO Duran explained his understanding of the "lungeable,

grabbable” area of a vehicle as follows: “It could be a cup holder, [inaudible], a floor mat, and pretty much that’s it.... Anywhere you could hide stuff.”

- PO Duran stated that he never entered the vehicle.
- Although PO Duran was initially planning to use his discretion to let § 87(2)(b) go without a summons, § 87(2)(b) continued arguing about the reasons for the stop and was repeatedly cursing at the officers about the stop. PO Duran ultimately decided to issue § 87(2)(b) a summons for § 87(2)(b), § 87(2)(a).

#### **Subject Officer: Sgt. Khandahar Abdullah**

- On January 29, 2015, Sgt. Abdullah was interviewed at the CCRB (encl. 6C-D). Initially, he did not remember the incident, but after viewing the video footage, he recalled some details about it.
- Sgt. Abdullah was assigned to anticrime with PO Duran and PO Aponte. PO Duran was the operator. They observed § 87(2)(b) driving in front of them, in the wrong lane of a two-way street and pulled him over in order to investigate why he was driving on the wrong side of the road and possibly issue a summons.
- Sgt. Abdullah indicated that § 87(2)(b)'s vehicle windows were tinted.
- Sgt. Abdullah approached the driver's side and asked for § 87(2)(b)'s license and registration. § 87(2)(b) only rolled his window down halfway. Sgt. Abdullah described § 87(2)(b) as appearing nervous and fidgety. § 87(2)(b) avoided eye contact and looked away from the officers. He was leaning to his right side, near the center console, as though he was attempting to conceal something from the officer's view, but Sgt. Abdullah did not recall if § 87(2)(b) actually reached into the console. Sgt. Abdullah also described his demeanor as belligerent, noting that he spoke in a loud tone and refused to provide the requested documents, despite multiple requests from Sgt. Abdullah.
- Sgt. Abdullah instructed § 87(2)(b) to get out of the vehicle multiple times. § 87(2)(b) was initially noncompliant, but eventually both he and § 87(2)(b) a passenger in the vehicle, exited and were taken to the rear of the vehicle. § 87(2)(b) was calm. § 87(2)(b) was calmer once they had exited vehicle.
- Sgt. Abdullah then “looked inside” the vehicle, including the passenger's and driver's side areas, near the seats, in the crevices between the console and the seats, in the foot area, and around where § 87(2)(b) had been seated. Sgt. Abdullah did this because, based on § 87(2)(b)'s earlier actions, he suspected § 87(2)(b) had been concealed something. Nothing was recovered during the search and no other officers searched the vehicle.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- Sgt. Abdullah was the supervisor on scene and he admitted that he was the officer who searched the vehicle. § 87(2)(g)
- PO Duran said that it was his decision to issue the summons to § 87(2)(b) § 87(2)(g)
- As discussed in further detail below, the officer who allegedly made the threat of force could not be identified. § 87(2)(b) did not hear the remark and § 87(2)(b) simultaneously attributed the remark to more than one officer, confusing the issue of which officer it was. § 87(2)(g)

#### **Allegations Not Pleaded**

Abuse of Authority – Refusal to obtain medical attention: § 87(2)(b) said he was experiencing stomach pain during the incident and told the officers that he needed to leave and possibly go to the

hospital. However, he also said an officer asked if he wanted EMS to be called, and that he replied by stating that he preferred to drive himself to the hospital. § 87(2)(b) never went to the hospital.

§ 87(2)(g)

**Allegation A – Abuse of Authority: Sgt. Khandahar Abdullah stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation C – Abuse of Authority: PO Elvis Duran issued a summons to § 87(2)(b)**

It is undisputed that Sgt. Abdullah stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants and undisputed that PO Duran issued a summons to § 87(2)(b) for § 87(2)(b), § 87(2)(a) (encl. 7A). It is disputed whether they were justified in doing so.

Sgt. Abdullah and PO Duran both had limited recollections of the incident and their testimonies varied on some key details. However, they both recalled that § 87(2)(b) was pulled over for driving into the opposite lane of traffic and that he had tinted windows. PO Duran also recalled that § 87(2)(b) had a headlight out and that he passed the officers while traveling at a high rate of speed. The officers' statements that § 87(2)(b) was driving recklessly were corroborated by their memo book entries and the summons issued to § 87(2)(b). The Event Summary related to the incident (encl. 7H) lists the job type as a possible crime, suspicious vehicle. Furthermore, video footage of the incident shows the officers explaining to § 87(2)(b) that the reasons for his stop were his headlights, tinted windows, and reckless driving.

§ 87(2)(b) claimed that his headlights were working, which he confirmed during the incident and captured on video. However, also captured on the video is one of the officers pointing out that the headlights are "HIDs" (high-intensity discharge lamps) that have a tendency to turn off and on.

Both civilians admitted that § 87(2)(b)'s windows were tinted, and in the video, the rear window appears tinted. § 87(2)(b) said he believed the level of tinting was legal and that it came with the vehicle when it was purchased. However, § 87(2)(b) also told the CCRB that the vehicle is owned by his brother, § 87(2)(g).

§ 87(2)(b) The officers did not mention that any of them conducted a tint meter test during the incident.

Both civilians initially denied that § 87(2)(b) committed any traffic violations and § 87(2)(b) § 87(2)(b), § 87(2)(a) summons was eventually dismissed. When pressed for details during his CCRB interview, § 87(2)(b) equivocated about the path of his car immediately prior to being stopped. He admitted that he drove "to the side" to get around potholes in the road and admitted to driving partially into the other lane. He further recalled that it was a wide street without any lane markings. The investigation determined, based on § 87(2)(b)'s video footage and images from Google Street View, that there were in fact lane markings: a flush median outlined by two sets of very faded, double yellow solid lines.

Section 1212 of the New York State Vehicle and Traffic Law states that a person is guilty of reckless driving when he drives in a way that interferes with the free and proper use of a public highway or in a manner that unreasonably endangers users of the highway (encl. 1A).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Abuse of Authority: Sgt. Khandahar Abdullah searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

Both civilians alleged that Sgt. Abdullah searched the vehicle. § 87(2)(b) specified that he searched under the seats, in the visors, in the door pockets, and behind the seats, including the luggage area that is accessible from the front seat, but that he did not open the trunk. Video footage confirms that Sgt. Abdullah leaned into both the passenger's side and driver's side doors, and confirms that Sgt. Abdullah was using a flashlight while inside the car.

Sgt. Abdullah acknowledged that he looked inside the vehicle, including the passenger's and driver's side areas, near the seats, in the crevices between the console and the seats, in the foot area, and around where § 87(2)(b) had been seated. Sgt. Abdullah said nothing was recovered during the search and no other officers searched the vehicle.

Sgt. Abdullah said that he searched the car because § 87(2)(b)'s actions made him think § 87(2)(b) had concealed something in the vehicle. Sgt. Abdullah explained that when he approached the car, § 87(2)(b) only rolled the window down halfway and then refused to provide his license and registration when asked. He described § 87(2)(b) as belligerent, raising his tone of voice, as well as nervous and fidgety, avoiding eye contact and looking away from the officers. He also described § 87(2)(b) leaning to his right side, near the center console, as though he was attempting to conceal something from the officer's view. Sgt. Abdullah did not recall if § 87(2)(b) actually reached into the console or had anything gripped in his hand. Sgt. Abdullah also said that § 87(2)(b) initially refused to get out of the vehicle when instructed.

PO Duran initially denied the car was searched, and after viewing the video, clarified that he did not recall a search and did not recall any reasons for a search to be conducted. However, he did note that § 87(2)(b) had been reaching towards the cup holder rapidly with his hands and appeared to be trying to hide something. After viewing the video footage, PO Duran still denied any recollection of a vehicle search, but acknowledged that he told § 87(2)(b) that the officers do not search vehicles, they "look at lungeable grabbable areas."

§ 87(2)(b) claimed that he was cooperative with the officers during the stop. However, he did admit to arguing with the officers, and both § 87(2)(b)'s testimony and the video footage show that § 87(2)(b) was upset during the incident.

§ 87(2)(g)

Where a vehicle's occupants have been removed without incident such that any immediate threat to the police officer's safety has been eliminated, it is generally unlawful for the officer, in the absence of probable cause, to invade the interior of a stopped car. However, if information gathered during a stop reveals that there is a substantial likelihood of a weapon being present in the vehicle and that the weapon poses an actual and specific danger to the officer's safety, the officer would be justified in engaging in a limited intrusion into the suspect's vehicle, notwithstanding the suspect's inability to gain immediate



access to that weapon. People v. Newman 96 A.D.2d (1<sup>st</sup> Dept. 2012) (encl. 1B-G)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Abuse of Authority: An officer threatened to use force against** § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) claimed that during the incident, an officer said, “He’s lucky I don’t beat his ass,” in reference to § 87(2)(b). § 87(2)(b) did not hear any officer make this remark. The remark is not captured on the video footage.

§ 87(2)(b) did not provide specific context for the remark. Furthermore, his testimony indicated confusion about which officer said this. During his statement, § 87(2)(b) conflated the actions of Sgt. Abdullah and PO Duran, at various times attributing actions to them both that were determined by the investigation to have only been done by one officer. He simultaneously attributed the alleged threat to the operator of the police vehicle who told § 87(2)(b) that a car search was not being conducted (identified by the investigation as PO Duran), and also to the bald officer who searched the car (identified by the investigation as Sgt. Abdullah).

§ 87(2)(g)

§ 87(2)(g)

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Pod: 14

Investigator:

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Supervisor:

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